

REMARKS

In complete response to the outstanding Official Action of November 24, 2008, on the above-identified application, reconsideration is respectfully requested. Claims 13-23 and 25-27 remain in this application.

Claim Rejections Under 35 U.S.C. § 102

Claims 13-23, 25, and 27 stand rejected under 35 U.S.C. § 102(a) or (b) as being anticipated by Allemand '453 (cited using its English equivalent US '054). Applicant respectfully submits that Allemand '453 is not prior art as to the claims because Applicant's priority claim predates Allemand '453. Applicant has contemporaneously submitted a translation of the French priority application (number 04/50,351 dated February 25, 2004) and a translator's certification as to the accuracy of the translation. As such, Applicant has perfected its priority claim and the rejection should be withdrawn.

Claim Rejections Under 35 U.S.C. § 103

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Allemand '453. As discussed above, Allemand '453 fails to qualify as prior art thereby rendering the rejection moot.

Claims 13 – 23 and 25 – 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ducrocq (WO 03056044, cited using its English equivalent, PG-pub US 2005/0103159) in view of Meyers et al '122.

The Examiner notes that:

"The setpoints C1 and C2 are recognized as result-effective variables in term of aluminum melting, which is evidenced by Ducrocq '044. Ducrocq '044 teaches of the analysis of the CO and H2 concentrations during melting in a furnace fitted with a burner operation in combustion mode with oxygen, which may be used as a basis for regulating an aluminum melting process."

The Applicants respectfully point out that independent Claim 13 (as well as independent Claim 27) of the instant application does more than simply claim the use of setpoints to regulate an aluminum melting process. Claim 13 of the instant application demands, among other requirements:

- the initial regulation of either carbon monoxide or hydrogen concentration (or both) to a first setpoint (C1),
- then, during an oxidation limitation phase
 - either keeping the oxidizer constant and modulating the fuel flow,
 - or keeping the fuel flow constant and modulating the oxidizer flow,
- in order to decrease either the carbon monoxide and hydrogen concentration (or both) to a second, different, setpoint (C2).

Applicant respectfully asserts that the skilled artisan would find that (at least) *these* elements are neither taught nor suggested by either Ducrocq '044 or Meyers et al '122, alone or in combination. Thus, the rejection may be withdrawn.

Double Patenting Rejections

Claims 13-23 and 25-27 are rejected on the ground of non-statutory doctrine of obviousness-type double patenting as unpatentable over copending U.S. Patent Application 10/555,313. Applicant, who has 100% of the rights to both the instant application and the '313 application, has contemporaneously submitted a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on the '313 application. As such, the rejection should be withdrawn.

Claims 13-23 and 25-27 are rejected on the ground of non-statutory doctrine of obviousness-type double patenting as unpatentable over U.S. Patent Application 10/497,454 (now U.S. 7,462,218). Applicant, who has 100% of the rights to both the instant application and the '218 patent, has contemporaneously submitted a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on the '218 patent. As such, the rejection should be withdrawn.

CONCLUSION

In view of the current amendments, the present application now stands in condition for allowance. Early notice to this effect is earnestly solicited.

Respectfully submitted,

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